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2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 CHARLES COLEMAN, JR.,
7 Plaintiff,

Case No. 2:19-cv-02155-KJD-BNW

8 v.

ORDER

9 RIDE NOW, LLC,
10 Defendant.
11

12 Presently before the Court is plaintiff Charles Coleman, Jr.'s Amended Complaint (ECF
13 No. 6), filed on February 7, 2020. For the reasons discussed below, the Court dismisses Plaintiff's
14 Amended Complaint, but with leave to amend.

15 **I. Background**

16 On December 17, 2019, Mr. Coleman, who is proceeding *pro se* and *in forma pauperis*,
17 filed his complaint. (ECF No. 1-1.) On January 8, 2020, the Court screened his complaint and
18 dismissed it for failure to state a claim, with leave to amend. (ECF No. 4.)

19 On February 7, 2020, Mr. Coleman filed the Amended Complaint. (ECF No. 6.) The
20 Court now screens his Amended Complaint (ECF No. 6) as required by 28 U.S.C. § 1915(e)(2).

21 **II. Screening the Complaint**

22 **A. Standard of Review**

23 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
24 under 28 U.S.C. § 1915(e)(2).¹ In screening the complaint, a court must identify cognizable
25 claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may
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27 ¹ Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma*
28 *pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of
28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]”).

1 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
2 § 1915(e)(2).

3 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
4 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
5 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient
6 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*
7 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a
8 claim, all allegations of material fact are taken as true and construed in the light most favorable to
9 the plaintiff. *Wyler Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)
10 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual
11 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
13 insufficient. *Id.* Unless it is clear that the complaint’s deficiencies could not be cured through
14 amendment, a plaintiff should be given leave to amend the complaint with notice regarding the
15 complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

16 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832
17 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik v.*
18 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). But “the liberal pleading standard . . . applies only
19 to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989); *see also*
20 *Bruns v. Nat’l Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of*
21 *Regents*, 673 F.2d 266, 268 (9th Cir. 1982)) (noting that a liberal construction may not be used to
22 supply an essential element of the claim absent from the complaint).

23 **B. Analysis**

24 Here, Mr. Coleman sues his former employer Ride Now, LLC and asserts several
25 employment-related claims and civil rights claims. (ECF No. 6.) Although Mr. Coleman
26 identified a defendant and the relief that he seeks, his Amended Complaint is still deficient.
27 Specifically, the Amended Complaint does not include a copy of the U.S. Equal Employment
28 Opportunity Commission’s right-to-sue letter, which is required for federal employment

1 discrimination claims. *See, e.g., B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir.
2 2002), *as amended* (Feb. 20, 2002) (citing 42 U.S.C. § 2000e–5(b)) (“Under Title VII, a plaintiff
3 must exhaust h[is] administrative remedies by filing a timely charge with the EEOC, or the
4 appropriate state agency, thereby affording the agency an opportunity to investigate the charge.”).
5 Mr. Coleman did include a copy of the EEOC’s right-to-sue letter in his original complaint. (ECF
6 No. 1-1 at 2). But it was incomplete and part of a prior pleading. The Court cannot refer to a prior
7 pleading or other documents to make Mr. Coleman’s Amended Complaint complete. *See Hal*
8 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding
9 that “[t]he fact that a party was named in the original complaint is irrelevant; an amended
10 pleading supersedes the original”).

11 Accordingly, the Court will order that Mr. Coleman’s Amended Complaint be dismissed,
12 but with leave to amend.

13 The Court will also order the Clerk of Court to mail Mr. Coleman a template complaint
14 for employment discrimination claims (i.e., Form Pro Se 7). The Court advises Mr. Coleman to
15 complete the form fully and in its entirety, including indicating what statutes or other laws he is
16 suing under. This is so the Court can determine if it has jurisdiction and if Plaintiff has pled facts
17 sufficient to meet all of the elements of each cause of action. The Court also advises Mr. Coleman
18 to attach a complete copy of the EEOC’s right-to-sue letter.

19 Additionally, the Court advises Mr. Coleman that if he files a Second Amended
20 Complaint, the original complaint (ECF No. 1-1) and Amended Complaint (ECF No. 6) will no
21 longer serve any function in this case. As previously noted, the Court cannot refer to a prior
22 pleading or other documents to make Mr. Coleman’s Second Amended Complaint complete. *See*
23 *Hal Roach Studios*, 896 F.2d at 1546. Put another way, the Second Amended Complaint must be
24 complete in and of itself without reference to prior pleadings or other documents.

25 Finally, if Mr. Coleman chooses to file a Second Amended Complaint, the Court will
26 screen it in a separate Screening Order as required by 28 U.S.C. § 1915(e)(2).

III. Conclusion

1. IT IS THEREFORE ORDERED that Plaintiff Charles Coleman, Jr.'s Amended Complaint (ECF No. 6) is dismissed with leave to file a Second Amended Complaint.

2. IT IS FURTHER ORDERED that if Mr. Coleman wishes to file a Second Amended Complaint, he must do so by September 1, 2020. If he chooses to file an amended complaint, he must write the words "Second Amended Complaint" in the caption. The amended complaint will be screened in a separate Screening Order. Additionally, the amended complaint must be a complete document in and of itself and will supersede the original complaint (ECF No. 1-1) and the Amended Complaint (ECF No. 6) in their entirety. Any allegations, parties, or requests for relief from prior papers that are not carried forward in the Second Amended Complaint will no longer be before the Court. The Second Amended Complaint must also include a copy of the U.S. Equal Employment Opportunity Commission's right-to-sue letter if Mr. Coleman moves forward with federal discrimination and retaliation claims.

3. IT IS FURTHER ORDERED that the Clerk of Court must send Mr. Coleman one blank complaint for employment discrimination form (Form Pro Se 7), one copy of the original complaint (ECF No. 1-1), one copy of the Amended Complaint (ECF No. 6), and one copy of this Screening Order.

DATED: July 28, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE